

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2007-1489-AIR-E **TCEQ ID:** RN101935492 **CASE NO.:** 34720
RESPONDENT NAME: Weirich Bros., Inc.

Page 1 of 2

| | | |
|--|---|---|
| ORDER TYPE: | | |
| <input checked="" type="checkbox"/> 1660 AGREED ORDER | <input type="checkbox"/> FINDINGS AGREED ORDER | <input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING |
| <input type="checkbox"/> FINDINGS DEFAULT ORDER | <input type="checkbox"/> SHUTDOWN ORDER | <input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER |
| <input type="checkbox"/> AMENDED ORDER | <input type="checkbox"/> EMERGENCY ORDER | |
| CASE TYPE: | | |
| <input checked="" type="checkbox"/> AIR | <input type="checkbox"/> MULTI-MEDIA (check all that apply) | <input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE |
| <input type="checkbox"/> PUBLIC WATER SUPPLY | <input type="checkbox"/> PETROLEUM STORAGE TANKS | <input type="checkbox"/> OCCUPATIONAL CERTIFICATION |
| <input type="checkbox"/> WATER QUALITY | <input type="checkbox"/> SEWAGE SLUDGE | <input type="checkbox"/> UNDERGROUND INJECTION CONTROL |
| <input type="checkbox"/> MUNICIPAL SOLID WASTE | <input type="checkbox"/> RADIOACTIVE WASTE | <input type="checkbox"/> DRY CLEANER REGISTRATION |
| <p>SITE WHERE VIOLATION(S) OCCURRED: Weirich Bros Davis Pit, 232 North 5th Street, Junction, Kimble County</p> <p>TYPE OF OPERATION: Wet sand and gravel processing plant</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: A complaint was received August 5, 2007, alleging that the regulated entity was not wetting the road and thus causing large dust clouds to cross the property line and affect off-property areas. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: A complaint was received, but the complainant has not expressed a desire to protest this action or to speak at Agenda.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on March 24, 2008. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Ms. Sidney Wheeler, Enforcement Division, Enforcement Team 4, MC 149, (512) 239-4969; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171 Respondent: Mr. Terry Weirich, President, Weirich Bros., Inc., P.O. Box 206, Johnson City, Texas 78636 Respondent's Attorney: Not represented by counsel on this enforcement matter</p> | | |

| VIOLATION SUMMARY CHART: | | |
|---|---|---|
| VIOLATION INFORMATION | PENALTY CONSIDERATIONS | CORRECTIVE ACTIONS TAKEN/REQUIRED |
| <p>Type of Investigation: <input checked="" type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: August 5, 2007</p> <p>Date of Investigation Relating to this Case: August 30, 2007</p> <p>Date of NOV/NOE Relating to this Case: September 5, 2007 (NOE)</p> <p>Background Facts: This was a complaint investigation.</p> <p>AIR</p> <p>Failed to achieve maximum control of dust emissions from permanent in-plant roads [30 TEX. ADMIN. CODE § 106.143 and TEX. HEALTH & SAFETY CODE § 382.085(b)].</p> | <p>Total Assessed: \$1,320</p> <p>Total Deferred: \$264 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid (Due) to General Revenue: \$156 (remaining \$900 due in 9 monthly payments of \$100 each)</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p> | <p>Ordering Provisions:</p> <p>The Order will require the Respondent to:</p> <p>a. Within 30 days after the effective date of this Agreed Order, implement procedures designed to achieve maximum control of dust emissions from all permanent in-plant roads; and</p> <p>b. Within 45 days after the effective date of this Agreed Order, submit written certification and include detailed supporting documentation to demonstrate compliance with Ordering Provision a.</p> |

Additional ID No(s): KG0017H



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision June 26, 2007

TCEQ
DATES

Assigned 10-Sep-2007
PCW 28-Sep-2007

Screening 28-Sep-2007

EPA Due

RESPONDENT/FACILITY INFORMATION

Respondent Weirich Bros., Inc.
Reg. Ent. Ref. No. RN101935492
Facility/Site Region 8-San Angelo

Major/Minor Source Minor

CASE INFORMATION

Enf./Case ID No. 34720
Docket No. 2007-1489-AIR-E
Media Program(s) Air
Multi-Media
Admin. Penalty \$ Limit Minimum \$0 Maximum \$10,000

No. of Violations 1
Order Type 1660
Enf. Coordinator Sidney Wheeler
EC's Team Enforcement Team 4

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)

Subtotal 1 \$1,000

ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History 32% Enhancement Subtotals 2, 3, & 7 \$320

Notes

Penalty enhancement due to two NOV's issued for same or similar violations, one non-similar NOV, and one 1660-styled agreed order.

Culpability

No

0% Enhancement

Subtotal 4 \$0

Notes

The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply

0% Reduction

Subtotal 5 \$0

Before NOV NOV to EDPRP/Settlement Offer

Extraordinary

Ordinary

N/A

X

(mark with x)

Notes

The Respondent does not meet the good faith criteria.

0% Enhancement*

Subtotal 6 \$0

Total EB Amounts \$100
Approx. Cost of Compliance \$4,500

*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7

Final Subtotal \$1,320

OTHER FACTORS AS JUSTICE MAY REQUIRE

Adjustment \$0

Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

Notes

Final Penalty Amount \$1,320

STATUTORY LIMIT ADJUSTMENT

Final Assessed Penalty \$1,320

DEFERRAL

20%

Reduction

Adjustment -\$264

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

Deferral offered for expedited settlement.

PAYABLE PENALTY

\$1,056

Screening Date 28-Sep-2007

Docket No. 2007-1489-AIR-E

PCW

Respondent Weirich Bros., Inc.

Policy Revision 2 (September 2002)

Case ID No. 34720

PCW Revision June 26, 2007

Reg. Ent. Reference No. RN101935492

Media [Statute] Air

Enf. Coordinator Sidney Wheeler

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

| Component | Number of... | Enter Number Here | Adjust. |
|-------------------------------|--|-------------------|---------|
| NOVs | Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria) | 2 | 10% |
| | Other written NOVs | 1 | 2% |
| Orders | Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria) | 1 | 20% |
| | Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission | 0 | 0% |
| Judgments and Consent Decrees | Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgements or consent decrees meeting criteria) | 0 | 0% |
| | Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government | 0 | 0% |
| Convictions | Any criminal convictions of this state or the federal government (number of counts) | 0 | 0% |
| Emissions | Chronic excessive emissions events (number of events) | 0 | 0% |
| Audits | Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted) | 0 | 0% |
| | Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed) | 0 | 0% |
| Please Enter Yes or No | | | |
| Other | Environmental management systems in place for one year or more | No | 0% |
| | Voluntary on-site compliance assessments conducted by the executive director under a special assistance program | No | 0% |
| | Participation in a voluntary pollution reduction program | No | 0% |
| | Early compliance with, or offer of a product that meets future state or federal government environmental requirements | No | 0% |

Adjustment Percentage (Subtotal 2) 32%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

Penalty enhancement due to two NOVs issued for the same or similar violations, one non-similar NOV, and one 1660-styled agreed order.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 32%

| | | | | | |
|--|--|--|--|------------|--|
| Screening Date 28-Sep-2007 | | Docket No. 2007-1489-AIR-E | | PCW | |
| Respondent Weirich Bros., Inc. | | <small>Policy Revision 2 (September 2002)</small> | | | |
| Case ID No. 34720 | | <small>PCW Revision June 26, 2007</small> | | | |
| Reg. Ent. Reference No. RN101935492 | | | | | |
| Media [Statute] Air | | | | | |
| Enf. Coordinator Sidney Wheeler | | | | | |
| Violation Number | | <div style="border: 1px solid black; padding: 2px;">1</div> | | | |
| Rule Cite(s) | | <div style="border: 1px solid black; padding: 2px;">30 Tex. Admin. Code § 106.143 and Tex. Health & Safety Code § 382.085(b)</div> | | | |
| Violation Description | | <div style="border: 1px solid black; padding: 2px;">Failed to achieve maximum control of dust emissions from permanent in-plant roads. Specifically, dust was observed emanating from in-plant roads during an investigation conducted on 8/30/2007.</div> | | | |
| Base Penalty | | | | | <div style="border: 1px solid black; padding: 2px;">\$10,000</div> |

>> Environmental, Property and Human Health Matrix

| | | | | | |
|-----------|----------------|---|---|---|--|
| OR | Harm | | | | |
| | Release | Major | Moderate | Minor | |
| | Actual | <div style="border: 1px solid black; width: 40px; height: 15px;"></div> | <div style="border: 1px solid black; width: 40px; height: 15px;"></div> | x | |
| | Potential | <div style="border: 1px solid black; width: 40px; height: 15px;"></div> | <div style="border: 1px solid black; width: 40px; height: 15px;"></div> | <div style="border: 1px solid black; width: 40px; height: 15px;"></div> | |

Percent

10%

>> Programmatic Matrix

| | | | | |
|---|---|---|---|--|
| Falsification | Major | Moderate | Minor | |
| <div style="border: 1px solid black; width: 40px; height: 15px;"></div> | <div style="border: 1px solid black; width: 40px; height: 15px;"></div> | <div style="border: 1px solid black; width: 40px; height: 15px;"></div> | <div style="border: 1px solid black; width: 40px; height: 15px;"></div> | |

Percent

0%

Matrix Notes

Human health or the environment was exposed to insignificant amounts of pollutants which did not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment

\$9,000

Violation Events

| | | | |
|----------------------------|---|--------------------------|---|
| Number of Violation Events | <div style="border: 1px solid black; padding: 2px;">1</div> | Number of violation days | <div style="border: 1px solid black; padding: 2px;">1</div> |
|----------------------------|---|--------------------------|---|

| | | |
|--|--------------|---|
| <small>mark only one with an x</small> | daily | <div style="border: 1px solid black; width: 40px; height: 15px;"></div> |
| | monthly | <div style="border: 1px solid black; width: 40px; height: 15px;"></div> |
| | quarterly | <div style="border: 1px solid black; width: 40px; height: 15px;"></div> |
| | semiannual | <div style="border: 1px solid black; width: 40px; height: 15px;"></div> |
| | annual | <div style="border: 1px solid black; width: 40px; height: 15px;"></div> |
| | single event | x |

Violation Base Penalty

\$1,000

One single event is recommended.

| | | | |
|--|---|---|---|
| Economic Benefit (EB) for this violation | | Statutory Limit Test | |
| Estimated EB Amount | <div style="border: 1px solid black; padding: 2px;">\$100</div> | Violation Final Penalty Total | <div style="border: 1px solid black; padding: 2px;">\$1,320</div> |
| This violation Final Assessed Penalty (adjusted for limits) | | <div style="border: 1px solid black; padding: 2px;">\$1,320</div> | |

Economic Benefit Worksheet

Respondent Weirich Bros., Inc.
Case ID No. 34720
Reg. Ent. Reference No. RN101935492
Media Air
Violation No. 1

| Percent Interest | Years of Depreciation |
|------------------|-----------------------|
| 5.0 | 15 |

| Item Description | Item Cost No commas or \$ | Date Required | Final Date | Yrs | Interest Saved | Onetime Costs | EB Amount |
|------------------|------------------------------|---------------|------------|-----|----------------|---------------|-----------|
|------------------|------------------------------|---------------|------------|-----|----------------|---------------|-----------|

Delayed Costs

| | | | | | | | |
|--------------------------|---------|-------------|------------|-----|-------|-----|-------|
| Equipment | | | | 0.0 | \$0 | \$0 | \$0 |
| Buildings | | | | 0.0 | \$0 | \$0 | \$0 |
| Other (as needed) | | | | 0.0 | \$0 | \$0 | \$0 |
| Engineering/construction | | | | 0.0 | \$0 | \$0 | \$0 |
| Land | | | | 0.0 | \$0 | n/a | \$0 |
| Record Keeping System | | | | 0.0 | \$0 | n/a | \$0 |
| Training/Sampling | | | | 0.0 | \$0 | n/a | \$0 |
| Remediation/Disposal | | | | 0.0 | \$0 | n/a | \$0 |
| Permit Costs | | | | 0.0 | \$0 | n/a | \$0 |
| Other (as needed) | \$4,500 | 30-Aug-2007 | 8-Feb-2008 | 0.4 | \$100 | n/a | \$100 |

Notes for DELAYED costs

Estimated cost to ensure the prevention of dust emissions from in-plant roads. Date required is the date of the investigation. Final date is the projected date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

| | | | | | | | |
|-------------------------------|--|--|--|-----|-----|-----|-----|
| Disposal | | | | 0.0 | \$0 | \$0 | \$0 |
| Personnel | | | | 0.0 | \$0 | \$0 | \$0 |
| Inspection/Reporting/Sampling | | | | 0.0 | \$0 | \$0 | \$0 |
| Supplies/equipment | | | | 0.0 | \$0 | \$0 | \$0 |
| Financial Assurance [2] | | | | 0.0 | \$0 | \$0 | \$0 |
| ONE-TIME avoided costs [3] | | | | 0.0 | \$0 | \$0 | \$0 |
| Other (as needed) | | | | 0.0 | \$0 | \$0 | \$0 |

Notes for AVOIDED costs

Approx. Cost of Compliance

\$4,500

TOTAL

\$100

Compliance History

| | | | | |
|---|---|------------------------|---|-----------------------------------|
| Customer/Respondent/Owner-Operator: | CN601432255 | Weirich Bros., Inc. | Classification: Average | Rating: 5.70 |
| Regulated Entity: | RN101935492 | WEIRICH BROS DAVIS PIT | Classification: Average | Site Rating: 10.75 |
| ID Number(s): | AIR NEW SOURCE PERMITS STORMWATER WATER QUALITY NON PERMITTED | | ACCOUNT NUMBER PERMIT ID NUMBER | KG0017H TXR05P073 080100099 |
| Location: | 232 N 5TH ST, JUNCTION, TX, 76849 | | Rating Date: 9/1/2007 Repeat Violator: NO | |
| TCEQ Region: | REGION 08 - SAN ANGELO | | | |
| Date Compliance History Prepared: | September 13, 2007 | | | |
| Agency Decision Requiring Compliance History: | Enforcement | | | |
| Compliance Period: | September 13, 2002 to September 13, 2007 | | | |
| TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History | | | | |
| Name: | Sidney Wheeler | | Phone: | (210) 403-4078 |

Site Compliance History Components

- | | |
|--|-----|
| 1. Has the site been in existence and/or operation for the full five year compliance period? | Yes |
| 2. Has there been a (known) change in ownership of the site during the compliance period? | No |
| 3. If Yes, who is the current owner? | N/A |
| 4. If Yes, who was/were the prior owner(s)? | N/A |
| 5. When did the change(s) in ownership occur? | N/A |

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.
- Effective Date: 12/30/2005 ADMINORDER 2005-0005-WQ-E
- Classification: Major
- Citation: 30 TAC Chapter 327 327.3(b)
- Description: Failure to notify the Agency as soon as possible but not later than 24 hours after the discovery of the spill or discharge.
- Classification: Major
- Citation: 30 TAC Chapter 327 327.5(a)[G]
- Description: Failure of the responsible party to immediately abate and contain a spill or discharge.
- B. Any criminal convictions of the state of Texas and the federal government.
- N/A
- C. Chronic excessive emissions events.
- N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)
- | | | |
|---|------------|----------|
| 1 | 02/24/2003 | (24413) |
| 2 | 09/15/2003 | (248810) |
| 3 | 12/07/2004 | (342524) |
| 4 | 12/19/2005 | (449869) |
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
- Date: 02/24/2003 (24413)
- Self Report? NO Classification: Minor
- Citation: TWC Chapter 26 26.121[G]
- Rqmt Prov: OP TXR05P073
- Description: Failure to identify non-storm water discharges that qualify for permit coverage in the SWP3.
- Self Report? NO Classification: Minor
- Citation: TWC Chapter 26 26.121[G]
- Rqmt Prov: OP TXR05P073
- Description: Failure to adequately evaluate and certify non-storm water discharges at the facility.
Failure to have an adequate non-storm water discharge evaluation and certification.

| | | | |
|------------------|---|-----------------|----------|
| Self Report? | NO | Classification: | Minor |
| Citation: | TWC Chapter 26 26.121[G] | | |
| Rqmt Prov: | OP TXR05P073 | | |
| Description: | Failure to develop and maintain the inventory of all exposed materials (including specific pollutants). | | |
| Self Report? | NO | Classification: | Minor |
| Citation: | TWC Chapter 26 26.121[G] | | |
| Rqmt Prov: | OP TXR05P073 | | |
| Description: | Failure to develop a narrative description of all activities that potentially contribute pollutants. | | |
| Self Report? | NO | Classification: | Minor |
| Citation: | TWC Chapter 26 26.121[G] | | |
| Rqmt Prov: | OP TXR05P073 | | |
| Description: | Failure of the site map to indicate all permit required features. | | |
| Self Report? | NO | Classification: | Moderate |
| Citation: | TWC Chapter 26 26.121[G] | | |
| Rqmt Prov: | OP TXR05P073 | | |
| Description: | Failure to list reportable quantity spills and leaks in the SWP3. | | |
| Self Report? | NO | Classification: | Moderate |
| Citation: | TWC Chapter 26 26.121[G] | | |
| Rqmt Prov: | OP TXR05P073 | | |
| Description: | Failure to implement and maintain good housekeeping procedures. | | |
| Self Report? | NO | Classification: | Minor |
| Citation: | TWC Chapter 26 26.121[G] | | |
| Rqmt Prov: | OP TXR05P073 | | |
| Description: | Failure to develop and use specific procedures to minimize or prevent storm water contamination. | | |
| Self Report? | NO | Classification: | Minor |
| Citation: | TWC Chapter 26 26.121[G] | | |
| Rqmt Prov: | OP TXR05P073 | | |
| Description: | Failure to clearly label drums, tanks and other containers. | | |
| Self Report? | NO | Classification: | Minor |
| Citation: | TWC Chapter 26 26.121[G] | | |
| Rqmt Prov: | OP TXR05P073 | | |
| Description: | Failure to develop and maintain an inventory of equipment and materials for spill clean-up. | | |
| Self Report? | NO | Classification: | Moderate |
| Citation: | TWC Chapter 26 26.121[G] | | |
| Rqmt Prov: | OP TXR05P073 | | |
| Description: | Failure to develop adequate Best Management Practices to reduce pollutants. | | |
| Self Report? | NO | Classification: | Minor |
| Citation: | TWC Chapter 26 26.121[G] | | |
| Rqmt Prov: | OP TXR05P073 | | |
| Description: | Failure of the employee training to meet permit requirement for all subject matter. | | |
| Self Report? | NO | Classification: | Minor |
| Citation: | TWC Chapter 26 26.121[G] | | |
| Rqmt Prov: | OP TXR05P073 | | |
| Description: | Failure to conduct quarterly inspections to evaluate the effectiveness of BMPs and training. | | |
| Self Report? | NO | Classification: | Moderate |
| Citation: | TWC Chapter 26 26.121[G] | | |
| Rqmt Prov: | OP TXR05P073 | | |
| Description: | Complete failure to conduct quarterly visual monitoring. | | |
| Self Report? | NO | Classification: | Moderate |
| Citation: | TWC Chapter 26 26.121[G] | | |
| Rqmt Prov: | OP TXR05P073 | | |
| Description: | Failure to conduct the annual comprehensive site compliance evaluation. | | |
| Self Report? | NO | Classification: | Moderate |
| Citation: | TWC Chapter 26 26.121[G] | | |
| Rqmt Prov: | OP TXR05P073 | | |
| Description: | Failure to claim and complete the hazardous metal waiver for the facility. | | |
| Self Report? | NO | Classification: | Moderate |
| Citation: | TWC Chapter 26 26.121(a)(3) | | |
| Description: | Unauthorized discharges adjacent to waters in the state. | | |
| Self Report? | NO | Classification: | Moderate |
| Citation: | 30 TAC Chapter 335, SubChapter A 335.4[G] | | |
| Description: | Storage of waste that poses a potential threat to the environment. | | |
| Date: 12/01/2005 | (438908) | | |
| Self Report? | NO | Classification: | Moderate |

Citation: 30 TAC Chapter 106, SubChapter E 106.143
Description: Failure to achieve maximum control of dust emissions from all permanent in-plant roads at the Davis Pit
Date: 07/16/2007 (567262)
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 106, SubChapter E 106.143
Description: Failure to achieve maximum control of dust emissions from permanent in-plant roads at the site
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 335, SubChapter A 335.4
Description: Failure to comply with the general prohibitions regarding municipal and industrial wastes

F. Environmental audits.
N/A

G. Type of environmental management systems (EMSs).
N/A

H. Voluntary on-site compliance assessment dates.
N/A

I. Participation in a voluntary pollution reduction program.
N/A

J. Early compliance.
N/A

Sites Outside of Texas
N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
WEIRICH BROS., INC.
RN101935492

§ BEFORE THE
§
§ TEXAS COMMISSION ON
§
§ ENVIRONMENTAL QUALITY

AGREED ORDER DOCKET NO. 2007-1489-AIR-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Weirich Bros., Inc. ("the Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 382 and TEX. WATER CODE ch. 7. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns and operates a wet sand and gravel processing plant at 232 North 5th Street in Junction, Kimble County, Texas (the "Plant").
2. The Plant consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
3. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about September 10, 2007.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of One Thousand Three Hundred Twenty Dollars (\$1,320) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid One Hundred Fifty-Six Dollars (\$156) of the administrative penalty and Two Hundred Sixty-Four Dollars (\$264) is deferred contingent upon

the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, including the payment schedule, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

The remaining amount of Nine Hundred Dollars (\$900) of the administrative penalty shall be payable in nine monthly payments of One Hundred Dollars (\$100) each. The next monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment until paid in full. If the Respondent fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, the Executive Director may, at the Executive Director's option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, the failure of the Respondent to meet the payment schedule of this Agreed Order constitutes the failure by the Respondent to timely and satisfactorily comply with all the terms of this Agreed Order.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
10. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
11. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As owner and operator of the Plant, the Respondent is alleged to have failed to achieve maximum control of dust emissions from permanent in-plant roads, in violation of 30 TEX. ADMIN. CODE § 106.143 and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on August 30, 2007.

III. DENIALS

The Respondent generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations, which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Weirich Bros., Inc., Docket No. 2007-1489-AIR-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. It is further ordered that the Respondent shall undertake the following technical requirement:
 - a. Within 30 days after the effective date of this Agreed Order, implement procedures designed to achieve maximum control of dust emissions from all permanent in-plant roads, as required by 30 TEX. ADMIN. CODE § 106.143; and
 - b. Within 45 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation to demonstrate compliance with Ordering Provision No. 2.a. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

with a copy to:

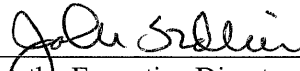
Air Section, Manager
San Angelo Regional Office
Texas Commission on Environmental Quality
622 South Oakes, Suite K
San Angelo, Texas 76903-7013

3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Plant operations referenced in this Agreed Order.
4. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
7. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission


For the Executive Director

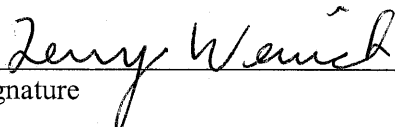
3/5/2008
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.


Signature

12-20-07
Date

TERRY WEIRICH
Name (Printed or typed)
Authorized Representative of
Weirich Bros., Inc.

Pres
Title

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.

